

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

APPEAL NO.755 OF 1998
IN
COMPANY PETITION NO.101 OF 1997

M/s. Jayna Packaging Pvt. Ltd. ..Appellant.
(Orig. Respondent/ company)

Vs.

M/s. Paper Board & Packaging
Services ..Respondent.
(Orig. Petitioner)

....

Smt. Eventa Gonsalves for the Appellant.
None for the Respondent.

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CORAM: R. M. S. KHANDEPARKAR, &
DR. D.Y. CHANDRACHUD, JJ.

25th January, 2007.

P.C. :

1. Heard the learned advocate for the Appellant. None present for the Respondent.

2. This Appeal arises out of an order dated 26th March, 1998 passed in Company Petition 101 of 1997. By the impugned order the Appellant which was the Respondent in the Company Petition was directed to deposit a sum of Rs.1,10,000/- on or

before 30th April, 1998 without prejudice to the rights and liability of the parties and on such deposit being made, the Petition was directed to stand dismissed. At the same time by the impugned order the Respondent herein which was the Petitioner in the said Company petition was granted liberty to withdraw the amount if deposited within the specified time by the Appellant herein. It is against this later portion of the order that the present Appellant has come in this Appeal.

3. The Respondent herein had approached the Company Court with the company petition after issuing the notice dated 18th March, 1996 whereby the Respondent has served the notice in terms of Section 434 of the Companies Act, 1956 requiring the Petitioner to pay a sum of Rs.1,01,422/- on account of goods sold and delivered to the Applicant under six bills supplied and issued during the period from 26th August, 1995 to 1st October, 1995.

4. The Company Judge after observing that by way of affidavit in reply the Appellant except complaining that the goods

supplied were of inferior quality, no defence of substantial nature was sought to be raised, passed the impugned order.

5. Since the proceedings which were sought to be initiated before the Company Judge were in relation to the winding up of the company, on account of failure to clear company's liability to the Respondent, undoubtedly the learned Company Judge was justified in directing the Appellant to deposit the amount of Rs.1,10,000/-. However, after such direction, it was not open for the learned Single Judge to allow the Respondent to withdraw such amount without appropriate adjudication about the rights of the parties in relation to the said amount before appropriate forum in that respect. The learned advocate for the Appellant is therefore justified in contending that the Learned Company Judge could not have permitted the Respondent to withdraw the said amount without any adjudication before appropriate forum in respect of the entitlement of the said amount to the Respondent.

6. On this ground itself therefore, the impugned order to the

extent it permits withdrawal of the amount deposited needs to be set aside and the impugned order is modified to that extent.

7. As the matter relates to the year 1997, it would also be in the fitness of the case to direct the Appellant to inform the Respondent about the order which is being passed today in this Appeal and further intimation that, in case no steps are taken by the Respondent in relation to the amounts so deposited to establish the claim of the Respondent to withdraw the said amount in accordance with the provisions of law within the specified period, the Appellant would be permitted to withdraw the said amount.

8. Accordingly we allow the Appeal. The impugned order to the extent it permits the Respondent to withdraw the amount deposited by the Appellant is hereby quashed and set aside and the impugned order is modified to that extent. The Appellant is directed to inform the Respondent by registered post about the order which is being passed today with further intimation that the Respondent shall take appropriate steps in accordance with the

provisions of law in relation to its claim to the said amount deposited by the Appellant within a period of four months from the date of such intimation by the Appellant to the Respondent, failing which the Appellant is directed to withdraw the said amount by furnishing a necessary indemnity bond. Ordered accordingly. The Appeal stands disposed of accordingly. There shall be no order as to costs.

(R. M. S. KHANDEPARKAR, J.)

(DR. D.Y. CHANDRACHUD, J.)